

IN THE HIGH COURT OF JUDICATURE AT PATNA

In the matter of an appeal under Section 96
of the Code of Civil Procedure

First Appeal No.535 of 1996

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Raghunandan Mantri

Son of Late Maliram Mantri and residents of Loharpatti Road, Kishunganj, P.O.
and P.S. Kishanganj, District Purnea now Kishanganj

..... Appellant/s

Versus

1. Shiy Nandan Mantri son of Late Maliram Mantri resident of Loharpatti Road,
P.O. and P.S. Kishanganj, District Purnea now Kishanganj.

2. Smt. Shakuntala Devi daughter of late Maliram Mantri and wife of Mahabir Pd.
Rathi, resident of 204, Rajendra Cooperative Housing Society, S.V. Road, Mahesh
Nagar Joragaon, Bombay 62.

3. Smt. Bimla Devi Lokhotia daughter of Late Maliram Mantri and wife of
Shambhu Dayal Lakhota, 459 Madhobari, Baraily, P.O. and P.S. and District
Baraily (U.P.)

.....Defendant Ist PartyRespondent Ist Party

4. Deleted.

5. Bijoy Kumar Mantri

6. Rabi Kumar Mantri

Sons of Late Bishwambhar Lal Mantri

7. Deleted.

8. Laxmi Devi daughter of Late Bishwambhar Lal Mantri and wife of Santosh
Kumarjee, 4, Tarachand Dutta Street, Calcutta.

9. Jaiyanti Devi Wife of Domodar Pd. Muchhali and daughter of Late
Bishwambharlal Mantri and resident of Goleha Katra, M.G. Road, P.O. and P.S.
Katihar District – Katihar

10. Smt. Pushpa Devi Randhar daughter of Late Bishwambharlal Mantri and wife
of Damodar Prasad Jee Randhar P.O. Makrana District Nagore (Rajasthan)

11. Smt. Rama @ Jama Devi Karwa daughter of Late Bishwambharlal Mantri and
wife of Dinesh Kumar Jee Karwa resident of Main Bazar Islampur P.O. and P.S.
Islampur District Dinajpur (West Bengal)

.....Defendant 2nd Party Respondent ...

12. Bibi Wasima Khatoon wife of Abdul Subhan resident of Mohiuddinpur, P.S.
Kishanganj District Purnea now Kishanganj

.....Defendant 3rd Party Respondent 3rd party....

13. Mostt. Premlata Mantri

14. Mostt. Hulasi Devi Mantri

Both widow of Late Deoki Nandan Mantri

15. Pradip Kumar Mantri

16. Pramod Kumar Mantri

17. Sanjay Kumar Mantri

18. Ajay Kumar Mantri

Respondent nos. 15 to 18 sons of Late Deokinandan Mantri and all residents of
Anand Sadan, Loharpatty Road, P.S. and District Kishanganj

19. Rakesh Kumar Mantri son of Late Deokinandan Mantri residing at M/s
Lakhota Trading Co. 459, Madhobari P.O. Bareilly (U.P)

20. Smt. Leela Devi Tuwani daughter of Late Deokinandan Mantri and wife of Sri

shyam Sundar Tuwani, residing at C/o M/s Mohanlal Narayanmal Tuwani P.O. Bijni District Bongaigaon (Assam)

21. Smt. Seema daughter of Late Deoki Nandan Mantri and wife of Sri Binod Kumar Soni, residing at C/o M/s Inderchand Binod Kumar Soni Kasipur Bazar P.O. Murliganj (Madhepura) Bihar.

.... Respondent/s

Appearance :

Advocate for the Appellant/s : Mr. GANPATI TRIVEDI

Advocate for the Respondent/s : Mr. Najmul Hoda

Mr. Firoz Ahmad


Mr. M.Z.Quamar

CORAM: HONOURABLE MR. JUSTICE SHAILESH KUMAR SINHA
ORAL JUDGMENT

Date: 08-05-2012


The appeal is directed against the judgement and decree dated 23rd August 1996 passed by the IInd Subordinate Judge, Purnia in Title Suit No. 2 of 1989 whereby plaintiffs' suit for partition in respect of the suit properties mentioned in schedule – A and C of the plaint was decreed in part on contest. It was further held that partition deed dated 10.05.1979, family settlements dated 21.09.1982 and 29.09.1982 and partition deed dated 24.04.1987 are valid and were acted upon by which partition by metes and bounds were taken place and the parties are separate in mess, transaction, residence and realizing rent separately.

Plaintiffs have preferred this appeal against the aforesaid judgement and decree, however, during hearing of the appeal confines his grievance with respect to the findings recorded in Paragraph – 75 of the judgment wherein it has been held that mutation of two shops Dhaka Pharmacy and Mihir




Pharmacy as also the land behind the shops must be mutated half and half between the plaintiff Raghunandan Mantri and the defendant Shivnandan Mantri as also for absence of any findings with respect to the godown in the land behind the Maheshwari Trading Company. In view of this limited grievances of the appellant full details of the suit properties as also other relevant details are not repeated which have already been recorded in the judgement elaborately.

Mr. Ganpati Trivedi, learned counsel for the appellant submits that property in question were partitioned as per the family settlement deed dated 29th of September 1982 (Exhibit – A/2) although according to the plaintiffs, there was no partition by metes and bounds. Learned counsel submits that the Court below upon considering the oral evidence as also the partition deed dated 10.05.1979, family settlement deed dated 21.09.1982 and 29.09.1982 as also partition deed dated 24.07.1987 held that there was no partition between the family by metes and bounds. Mr. Trivedi submits that notwithstanding the stand of the plaintiffs that there was no partition by metes and bounds, however, even according to the partition as held by the court, the plaintiffs were entitled to the possession of the property as per the settlement deed dated 29th of September 1982 (Exhibit – A/2). It is further submitted that on perusal of the aforesaid settlement deed, it would appear that two shops namely, Dhaka Pharmacy and Mihir Pharmacy at Dharamsala Road, Kishanganj were totally




allotted to the plaintiffs- Appellant as also half of the open land behind the aforesaid two shops was exclusively allotted to the plaintiffs. The Trial Court, however, held contrary to the admitted settlement deed dated 29th of September 1982 by holding that mutation of Dhaka Pharmacy and Mihir Pharmacy and land attached to it, must be mutated half and half in favour of Sheonandan Mantri and Raghunand Mantri. The said finding is contrary to the admitted settlement deed dated 29th of September 1982. Similarly, as per the aforesaid settlement deed, the godown behind the Maheshwari Trading Company was allotted in the share of the plaintiffs. The trial court did not give any finding with respect to the said land and as such, the judgement and decree deserves to be modified to the above extent.

Mr. Najmul Hoda, learned counsel for the respondents, on the other hand, submits that plaintiffs had filed the suit for partition on the basis of admitted partition deed and the settlement deed which are on record. It is contended that since there was already partition in the family by metes and bounds as such, there could be no justification in law for filing the second suit for partition, which itself being not maintainable ought to have been dismissed. Although, there is no appeal by the defendant against the judgement and decree. It is further submitted that notwithstanding the above, it is not in dispute that the parties were entitled to their respective share as per the settlement deed dated 29th of September 1982 (Exhibit – A/2)



besides the other property including the property situated at Dharamsala Road, Kishanganj as also the other properties including the land mentioned in the schedule allotted to the plaintiffs namely, Raghunandan Mantri and Sheonandan Mantri. It is submitted that on perusal of the said settlement deed dated 29th of September 1982, it would appear that two shops namely, Dhaka Pharmacy and Mihir Pharmacy alongwith the open land situated behind the aforesaid two shops as also the land behind the Maheshwari Trading Company all were allotted half and half between the Raghunand Mantri and Sheonandan Mantri and as such, the judgement and decree under the appeal calls for no interference.

Upon considering the rival submissions of the parties, it would appear that in this appeal, the only dispute raised by the appellant is with respect to the two shops namely, Dhaka Pharmacy and Mihir Pharmacy and the lands behind the aforesaid two shops as also the land behind the Maheshwari Trading Company. According to the appellant, on perusal of the settlement deed (Exhibit – A/2), it would appear that at Dharamsala Road, the aforesaid two shops were exclusively allotted to the plaintiffs and $\frac{1}{2}$ of the land behind the aforesaid two shops as well as the godown behind the Maheshwari Trading Company was allotted to plaintiff Raghunandan Mantri whereas according to the respondent, in all the above property, the defendant, Sheonandan Mantri was allotted half and half. In order to appreciate the rival



submissions of the parties, the family settlement deed dated 29th of September 1982 (Exhibit-A/2) was perused where the property was allotted to Raghunandan Mantri and Sheonandan Mantri, separately given. On perusal of the aforesaid settlement deed, it would appear that the two shops namely, Dhaka Pharmacy and Mihir Pharmacy situated at Dharamsala Road was allotted to the plaintiff, Raghunand Mantri and the land behind the aforesaid two shops were allotted half and half between Raghunandan Mantri and Sheonandan Mantri. The above position gets clarified on perusal of the properties allotted to Sheonandan Mantri where it was also mentioned that the land situated behind the aforesaid two shops were allotted in ratio 50-50 between Raghunandan Mantri and Shoenandan Mantri.

In my opinion, the findings of the Court below as detailed in Paragraph – 75 that mutation of Dhaka Pharmacy and Mihir Pharmacy in the land behind it, must be mutated half and half in the name of Sheonand Mantri and Raghunandan Mantri is not in accordance with the family settlement deed dated 29th of September 1982 (Exhibit – A/2) and as such, mutation of the land with respect to the Dhaka Pharmacy and Mihir Pharmach as well as half of the land standing behind the aforesaid two shops, the plaintiff, Raghunandan Mantri is entitled to mutation over it and the remaining 50 percent of the land Sheonandan Mantri is entitled to be mutated. Similarly, the land situated behind the Maheshwari Trading Company as Godown, Raghunandan Mantri

is entitled to be mutated as per the family settlement deed dated 29th of September 1982 (Exhibit – A/2).

The judgement and decree under the appeal is modified to the above extent.

For the reasons and discussions made above, the appeal is partly allowed. In the circumstances, there shall be no order as to costs.

Patna High Court,
Patna
N.A.F.R./Jagdish/-

(Shailesh Kumar Sinha, J)